

<b>JUNE M. MILLER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 244,753
<b>ARBY'S</b>	)	
Respondent	)	
AND	)	
	)	
<b>CONTINENTAL CASUALTY COMPANY</b>	)	
Insurance Carrier	)	

Doing my clean up at work, another employee had grabed [sic] my hands and as I pulled away he let go so I triped [sic] backwards as I fell backwards on another employee's foot and hit the back of my head and back on the

bottom of the stainless steel work table in Kitchen area, I tried to break the fall with my right hand, but I could not.

Also on that Form E-1 she alleged injuries consisting of "swelling in right hand, wrist, forearm, back discomfort and right leg gets tired and heavy, the right shoulder swells also."

(2) After her fall, claimant was asked if she was okay. She said she was and continued working the rest of her scheduled shift. On March 22, 1999, she went on her own to Dr. Robert M. Osborn. Before going to Dr. Osborn, she did not tell anyone at work that she was injured nor request medical treatment from respondent.

(3) At that time she sought treatment for swelling and discoloration in both of her hands and bilateral arm pain. Dr. Osborn's records do not reflect that she described her problems as having been caused by a fall at work. She returned to Dr. Osborn on March 29 and again did not mention that her injuries were work related.

(4) Dr. Osborn referred claimant to a rheumatologist because he thought her condition could be rheumatoid arthritis, reflex sympathetic dystrophy or Raynaud's phenomenon. She did not keep this appointment due to an inability to pay for it. Instead, she went to Patricia A. Sandy, a nurse practitioner. Ms. Sandy referred claimant to Dr. Devendra Jain, a neurologist. Claimant said she also went to an internal medicine specialist, Dr. Pandu P. Chillal.

#### **CONCLUSIONS OF LAW**

Claimant bears the burden of proof to establish her claim. Burden of proof is defined in K.S.A. 1998 Supp. 44-508(g) as "... the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record." The burden of proof is:

"... on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record." K.S.A. 1998 Supp. 44-501(a).

Claimant attributes her current right hand, arm, elbow, shoulder, left arm, right leg and back symptoms to her accident while working for respondent. She presents no medical evidence attributing those new symptoms to that work-related injury. Conversely, there is no evidence refuting such a causal connection, nor is there any evidence of an intervening accident or injury.

Because of claimant's prior history of headaches, hand and arm symptoms, the delay in the onset of some of her symptoms and the delay in seeking medical treatment, the Appeals Board finds that claimant has not carried her burden of proving her entitlement to additional medical benefits. A recent medical opinion connecting the current symptoms to the accident would have been helpful. Hopefully, Dr. Osborn or some other physician will address this question of causation. But based upon the record compiled to date, the ALJ's order denying preliminary benefits must be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the August 18, 1999, Order by Administrative Law Judge Jon L. Frobish should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1999.

---

BOARD MEMBER

c: June M. Miller, 1308 S. Dewey, Bartlesville, OK 74003  
D. Steven Marsh, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director